

REMARKS

Responsive to the lack of unity determination, applicants provisionally elect Group I, claims 1 and 5-7 drawn to a chemical compound, a pharmaceutical composition, and a process for preparing a chemical compound of formula (I), with traverse.

Responsive to the election of species requirement applicants provisionally elect the compound on line 20, page 4 of claim 4, i.e., (4-Benzyloxy-benzyl)-(thiophen-2-ylmethyl)-amine, with traverse.

The reasons for traverse follow:

The position held by the Official Action is that the groups lack the same or corresponding special technical feature because a common core structure is not present in which the utility is attributed. However, both groups are directed to compounds of formula (I), and, thus, the groups share a common special technical feature.

Indeed, determination of the lack of unity is possible only when the claims of different groups lack a "special technical feature" relative to one another.

PCT Rule 13.2 in Part 1b of the Annex B of the administrative instructions under the PCT, specifies that "special technical features" is defined as meaning those features that define the contribution which each of the inventions, considered as a whole, makes over the prior art. In other words, PCT Rule 13.2 is art-based and requires the citation of a

publication showing the "special technical feature". Thus, absent any showing that the "special technical feature" is present in the present prior art reference, no determination of lack of unity can properly be made.

However, contrary to this requirement, the Official Action offered no such reference.

Further, in applying the same legal standard with similar claims, the International Search Authority did not determine the unity of invention as lacking. Thus, the Patent Office has the benefit of the search report, but failed to explain why a different legal conclusion was reached.

Therefore, the lack of unity determination is improper, and withdrawal of the restriction requirement is respectfully requested.

In view of the foregoing remarks, a favorable action on the merits of all pending claims is respectfully requested.

Should there be any matters that need to be resolved in the present application, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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